89- 10

Supreme Court, U.S.
FILED
JUL 3 1989
JOSEPH F. SPANIOL, JR.
CLERK

NO.

in the

Supreme Court
of the
United States
October Term, 1989

LINDY D. COSGROVE,

Petitioner,

vs.

STATE OF SOUTH DAKOTA

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH DAKOTA

MAX A. GORS
GORS AND BRAUN, P.C.
115 E. Sioux
P.O. Box 1115
Pierre, SD 57501-1115
Telephone: (605) 224-6281
Counsel for Petitioner

QUESTION PRESENTED

WHETHER SDCL 32-35-113 WHICH PUNISHES LINDY D. COSGROVE FOR FAILURE TO OBTAIN AUTOMOBILE INSURANCE VIOLATES HIS CONSTITUTIONAL RIGHT TO FREE EXERCISE OF RELIGION.

TABLE OF CONTENTS

	Page
Question Presented	i
Jurisdictional Statement	2
Opinion Below	2
Jurisdiction	2
Constitutional Provisions Involved	2
Raising the Federal Question	3
Statement of the Case	3
Reasons for Granting the Writ	4
Conclusion	13

APPENDIX

Page

Decision of the Supreme Court of South Dakota, dated May 3, 1989 1

Exhibit 1 (from Cosgrove's trial held on March 22, 1988) 7

Cosgrove's Proposed Findings of Fact and Conclusions of Law 8

Cosgrove's Proposed Judgment of Acquittal 14

Cosgrove Amended Objections to the State's Proposed Findings of Fact, Conclusions of Law and Proposed Judgment of Conviction 16

Notice of Appeal to the Supreme Court of the United States 19

TABLE OF CITATIONS

Pages

Braunfeld v. Brown,
366 U.S. 509, 81 S.Ct. 1144,
6 L.Ed.2d 563 (1961) 9

Cantwell v. Connecticut,
310 U.S. 296, 60 S.Ct. 900,
84 L.Ed.2d 1213 (1940) 5

Conway v. Humbert,
82 S.D. 317, 145 N.W.2d 524
(1966) 11

Defender v. City of McLaughlin,
288 F. Supp. 615
(D.S.D.) 1964) 12

Holland v. Parker,
354 F.Supp. 196 (D.S.D. 1973) 6

Holland v. Yankton School Dist. 63-3,
375 N.W. 199 (SD 1985) 12

Jerauld County v. Indemnity Co.,
76 S.D. 1, 71 N.W.2d 571 (1955) 12

John Deere Plow Co. of Moline v. Tuinstra,
47 S.D. 555, 200 N.W. 61 (1924) 7

Kesler v. Department of Public Safety, Etc., Utah,
369 U.S. 153, 82 S.Ct. 807,
7 L.Ed.2d 641 (1962) 9

Novak v. State Farm Mut. Auto. Ins. Co.,
293 N.W.2d 452 (SD 1980) 10

Provancial v. U.S.,
454 F.2d 72 (8th Cir. 1972);
463 F.2d 760 (8th Cir. 1972) 12

Quaring v. Peterson,
728 F.2d 1121 (8th Cir. 1984),
aff'd 472 U.S. 478, 105 S.Ct. 3492,
86 L.Ed.2d 383 (1985) 6, 8, 10, 12

Rapid City v. Boland,
271 N.W.2d 60 (SD 1978) 11

Shaw v. City of Mission,
88 S.D. 564, 225 N.W.2d 593 (1975) 11

Sherbert v. Verner,
374 U.S. 398, 83 S.Ct. 1790,
10 L.Ed.2d 965 (1963) 5, 6, 7, 8

Siefkes v. Watertown Title Co.,
437 N.W.2d 190 (SD 1989) 12

State v. Cosgrove,
439 N.W.2d 119 (SD 1989) 1, 4, 6

Thomas v. Collins,
323 U.S. 516, 65 S Ct. 315,
89 L.Ed. 430 (1944) 9

Thomas v. Review Bd. of Indiana Employment Security Div.,
450 U.S. 707, 101 S.Ct. 1425,
67 L.Ed.2d 624 (1981) 9, 12

U.S v. Lee,
455 U.S. 252, 102 S.Ct. 1051,
71 L.Ed.2d 127 (1982) 9

U.S. v. Seeger,
380 U.S. 163, 85 S.Ct. 850,
13 L.Ed.2d 733 (1965) 6

Wisconsin v. Yoder,
406 U.S. 205, 92 S.Ct. 1526,
32 L.Ed.2d 15 (1972) 6, 9, 12

Zens v. Chicago, M, St. P. & Pac. R.R.,
386 N.W.2d 199 (SD 1985) 12

CONSTITUTION

First Amendment to the United States Constitution
..... 2, 3, 4

Fourteenth Amendment to the United States Constitution
..... 5

Section 27, Article III, SD Constitution 11

OTHER AUTHORITIES

28 U.S.C. §1257 (a) 2

42 U.S.C. §§301 *et. seq.* 9

SDCL 3-21-7 11

SDCL 21-32-15 to-18 11

SDCL 28-13 9

SDCL 32-35-44 7

SDCL 32-35-47.2 7
SDCL 32-35-104 7
SDCL 32-35-113 ..... 3, 4, 6, 7, 9, 10, 13
SDCL 32-35-114 11
SDCL 32-35-116 11
SDCL 32-35-118 11
SDCL 32-35-121 6
SDCL 32-35-122 6
SDCL 56-2-1 7
SDCL 56-2-5 7
SDCL 56-2-7 7
SDCL 56-2-14 7
12A *Couch on Insurance 2d* 11
Deuteronomy 5:8-10 10
Exodus 20:4 10
Matthew 6:25-34 5

NO.

in the

Supreme Court
of the
United States

October Term, 1989

LINDY D. COSGROVE,

Petitioner,

vs.

STATE OF SOUTH DAKOTA

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH DAKOTA

Petitioner, LINDY D. COSGROVE, respectfully prays that a writ of certiorari issue to review the judgment and

opinion of the Supreme Court of South Dakota, rendered May 3, 1989.

JURISDICTIONAL STATEMENT

LINDY D. COSGROVE, the Petitioner, appeals from the decision of the Supreme Court of South Dakota, dated May 3, 1989, affirming the Judgment of the Circuit Court of the Fourth Judicial Circuit of South Dakota, dated May 23, 1988, adjudging Defendant guilty of having no insurance on an automobile as violative of the Petitioner's right to free exercise of religion under the First Amendment to the Constitution of the United States.

OPINION BELOW

The Supreme Court of South Dakota issued a decision dated May 3, 1989, affirming the Petitioner's conviction, attached hereto as Appendix 1 to 6 and reported as *State v. Cosgrove*, 439 N.W.2d 119 (SD 1989).

JURISDICTION

Jurisdiction of the Court is invoked under 28 U.S.C. §1257(a) to review the decision of the Supreme Court of South Dakota, rendered on May 3, 1989, the highest state court with jurisdiction to pass upon this issue. This Petition for Certiorari was filed within sixty days of that date.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the First Amendment to the Constitution of the United States.

RAISING THE FEDERAL QUESTION

The petitioner, LINDY D. COSGROVE, at the earliest possible stage of the trial proceeding below, raised the claim (as soon as he testified at his trial where he represented himself and following trial submitted Proposed Findings of Fact and Conclusions of Law and a Proposed Judgment of Acquittal and Amended Objections to the State's Proposed Findings of Fact, Conclusions of Law and Proposed Judgment of Conviction, Appendix 8-18), that SDCL 32-35-113 which punishes him for failure to obtain automobile insurance violates his right to free exercise of religion afforded him under the First Amendment to the Constitution of the United States. The trial court, by Judgment, ruled on the merits of Petitioner's claim by finding him guilty. The claim under the First Amendment was raised again before the Supreme Court of South Dakota, which affirmed the trial court's ruling.

STATEMENT OF THE CASE

The Petitioner, LINDY D. COSGROVE, was issued a traffic ticket on January 24, 1988, for violation of SDCL 32-35-113, for having no insurance on his automobile. Following a court trial on March 22, 1988, at which Cosgrove represented himself, the Court found Cosgrove guilty.

The state proposed a Judgment of Conviction and the Court requested proposed findings of fact and conclusions of law. The state proposed Findings of Fact and Conclusions of Law and a proposed Judgment of Conviction, and Cosgrove objected to the state's proposals, Appendix 16-18, and proposed his own Findings of Fact and Con-

clusions of Law, Appendix 8-13, and proposed Judgment of Acquittal, Appendix 14-15.

The court entered its Judgment of Conviction on May 23, 1988.

Cosgrove appealed to the Supreme Court of South Dakota on June 16, 1988, which affirmed on May 3, 1989, Appendix 1-6, *State v. Cosgrove*, 439 N.W.2d 119 (SD 1989).

This timely Petition for Writ of Certiorari follows.

REASONS FOR GRANTING THE WRIT

The First Amendment to the United States Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

SDCL 32-35-113 provides the following:

> Every driver or owner of a motor vehicle shall at all times maintain in force one of the forms of financial resposibility on the motor vehicle by one of the following methods:
>
> (1) Having in force on the motor vehicle an owner's policy of liability insurance as provided in §32-35-70;
>
> (2) Having in force a bond as provided in §32-35-83;

(3) Having a certificate of deposit of money or securities as provided in §32-35-87, but in the amount of fifty thousand dollars; or

(4) Having a certificate of self-insurance, as provided in §§32-35-90 and 32-35-91, supplemented by an agreement by the self-insurer that, with respect to accidents occurring while the certificate is in force, he will pay the same amounts that an insurer would have been obligated to pay under an owner's motor vehicle liability policy if it had issued such a policy to said self-insurer.

Religious freedom was at the very foundation of the American colonies and the American republic. The First Amendment is applicable to the states through the Fourteenth Amendment. *Cantwell v. Connecticut*, 310 U.S. 296, 303, 60 S.Ct. 900, 903, 84 L.Ed.2d 1213 (1940). *Sherbert v. Verner*, 374 U.S. 398, 402-03, 83 S.Ct. 1790, 1793, 10 L.Ed.2d 965 (1963), is the leading case on the clash between state legislation and the free exercise of religion guaranteed by the First Amendment.

Cosgrove has a religious conviction against having insurance. Cosgrove believes God has promised to provide in any situation. Matthew 6:25-34.

Cosgrove has not had insurance of any kind since he came to his religious conviction in 1972. When his wife took a job in 1977, she was to receive free insurance as a benefit. Cosgrove had her drop the free insurance. In 1980, Cosgrove got a job which also provided free insurance. Again, he dropped the insurance.

The expansive test of whether a belief is more than a

purely secular philosophy or personal belief, *Wisconsin v. Yoder*, 406 U.S. 205, 215-16, 92 S.Ct. 1526, 1533-34, 32 L.Ed.2d 15 (1972), is whether the belief is sincere and occupies a meaningful place in Cosgrove's life, *U.S. v. Seeger*, 380 U.S. 163, 165-66, 85 S.Ct. 850, 853-54, 13 L.Ed.2d 733 (1965). The sincerity of Cosgrove's belief is not in question. At the conclusion of the court trial, the Trial Court stated:

> THE COURT: Well, the Court finds that the defendant does have a religious persuasion or objection to having insurance. That is not a matter that's in question.

On appeal, the Supreme Court of South Dakota said, "We first observe that Cosgrove's religious belief appears to be sincerely held." *State v. Cosgrove*, 439 N.W.2d 119, 120 (SD 1989), Appendix 3.

SDCL 32-35-113 imposes a burden on the free exercise of Cosgrove's religion. *Sherbert v. Verner*, 374 U.S. 398, 403-04, 83 S.Ct. 1790, 1793-94, 10 L.Ed.2d 965 (1963). Upon conviction of having no insurance on his vehicles, Cosgrove was fined $75.00. More significantly, Cosgrove faces loss of his driver's license[1] for 30 days to one year. SDCL 32-35-121. Although SDCL 32-35-122 authorizes a work permit, Cosgrove must first comply with SDCL 32-35-113 by purchasing insurance which is what he ob-

---

[1]It does not matter whether a driver's license is characterized as a privilege or a right. *Holland v. Parker*, 354 F.Supp. 196 (D.S.D. 1973), free exercise of religion may be infringed by denying or restricting a driver's license. *Sherbert v. Verner*, 374 U.S. 398, 404, 83 S.Ct. 1790, 1794, 10 L.Ed.2d 965 (1963). A driver's license is an important benefit. *Quarting v. Peterson*, 728 F.2d 1121, 1125 (8th Cir. 1984), *aff'd* 472 U.S. 478, 105 S.Ct. 3492, 86 L.Ed.2d 383 (1985).

jects to in the first place. In addition, Cosgrove cannot get his license back at the end of the suspension unless he first complies with SDCL 32-53-113 by purchasing insurance. SDCL 32-35-47.2

The state will also suspend the registration of all of Cosgrove's vehicles, SDCL 32-35-44, and will seize the license plates and registration if he does not surrender them, SDCL 32-35-104.

Cosgrove cannot show alternative forms of financial responsibility because he cannot post a bond,[2] Appendix 7, or self-insure, SDCL 32-35-90 to-91. Cosgrove is faced with not driving,[3] posting $50,000.00 cash or violating his religious principles by buying insurance.

The Trail Court noted:

> If he feels as he does, the other alternative of a certificate of deposit is available. The fact that it does not suit his business purpose or interest to have that kind of money tied up, I guess, only equates to how deeply religious his belief is that insurance is not required.

---

[2]A bond is not insurance. SDCL 56-2-1. A bond is a guarantee that the surety will pay if the principal defaults. SDCL 56-2-5 and 56-2-7. If the surety pays, the surety then looks to the principal for reimbursement. SDCL 56-2-14; *John Deere Plow Co. of Moline v. Tuinstra*, 47 S.D. 555, 200 N.W. 61 (1924). A bonding company will require Cosgrove to guarantee that he has liquid assets greater than the bond. A bond is really no different than posting cash under SDCL 32-35-113(3), except that Cosgrove has to post it with the bonding company instead of the state and the amount is greater [$75,000.00 with the bonding company, versus $50,000.00 with the state. SDCL 32-35-113(3)]. In either instance Cosgrove must put up an enormous amount of money.

[3]Continued driving without insurance will result in continued arrests and fines. SDCL 32-35-113.

> If it's strong enough, he will have the certificate of deposit if he wishes to drive and operate a motor vehicle.

If Cosgrove could post $50,000.00, such an enormous pricetag on the "free" exercise of religion is a greater burden than fines, loss of license and the other consequences. Fifty thousand dollars is 100 times greater than the average cost of insurance in South Dakota at $500.00 per year. Even using a conservative figure of 10% interest, posting $50,000.00 would cost Cosgrove $5,000.00 per year or 10 times what other motorists pay in South Dakota.

Cosgrove's three choices--to not drive, post $50,000.00 or violate his religious principles--place an unmistakable burden on Cosgrove's free exercise of his religious beliefs. *Quaring v. Peterson*, 728 F.2d 1121, 1125 (8th Cir. 1984), *aff'd* 472 U.S. 478, 105 S.Ct. 3492, 86 L.Ed.2d 383 (1985), because "imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for" driving without insurance. *Sherbert v. Verner*, 374 U.S. 398, 404, 83 S.Ct. 1790, 1794, 10 L.Ed.2d 965 (1963). The Trial Court recognized the burden:

> But, in any event, if the defendant feels, as he does, that it's an infringement on his right to worship, although it does not prevent his worship by having insurance, I can see where he may feel there is an infringement on his total clarity of purpose of worshipping God or having a requirement that he does not believe in.

South Dakota does not have a compelling state interest which justifies the burden on the free exercise of Cosgrove's religion. *Sherbert v. Verner*, 374 U.S. 398, 406, 83 S.Ct. 1790, 1795, 10 L.Ed.2d 965 (1963). No mere rational relationship will suffice; only the gravest interests permit limitations. *Sherbert v. Verner*, 374 U.S. 398, 406, 83 S.Ct. 1790, 1795, 10 L.Ed.2d 965 (1963), *citing Thomas v. Collins*, 323 U.S. 516, 530, 65 S.Ct. 315, 323, 89 L.Ed. 430 (1944). Not all burdens violate the free exercise of religion guaranteed by the First Amendment. *U.S. v. Lee*, 455 U.S. 252, 257-58, 102 S.Ct. 1051, 1055, 71 L.Ed.2d 127 (1982); *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 718, 101 S.Ct. 1425, 1432, 67 L.Ed.2d 624 (1981). If exceptions for religious objectors will make the statutory scheme unworkable, *Braunfeld v. Brown*, 366 U.S. 509, 81 S.Ct. 1144, 6 L.Ed.2d 563 (1961), or if exemption impairs the state's ability to achieve its objective, *Wisconsin v. Yoder*, 406 U.S. 205, 221, 92 S.Ct. 1526, 1536, 32 L.Ed.2d 15 (1972), the state's compelling interest may justify restraint on the free exercise of religion.

The state's interest[4] is financial protection for persons who are injured in automobile collisions. (It should be noted that the taxpayers bear the burden either way, whether the risk is spread through insurance or taxation. Insurance is private risk-spreading through premiums in lieu of public risk-spreading through taxation[5]).

---

[4]For an exhaustive discussion of the history and purpose of financial responsibility laws, *see Kesler v. Department of Public Safety, Etc., Utah*, 369 U.S. 153, 158-169, 82 S.Ct. 807, 811-17, 7 L.Ed.2d 641 (1962).

[5]The taxpayers (in the aggregate) bear the burden in any event, whether through private taxation by payment of insurance premiums, i.e., SDCL 32-35-113, or through public taxation for insurance programs, i.e., social security, 42 U.S.C. §§ 301 et. seq., or welfare programs, SDCL 28-13.

Prior to 1986, South Dakota had a "one-bite rule" standard of financial responsibility. A driver only had to prove financial responsibility *for the future* when there was a conviction of certain offenses or failure to pay judgments arising out of ownership, maintenance or use of vehicles subject to registration in South Dakota. *Novak v. State Farm Mut. Auto. Ins. Co.*, 293 N.W.2d 452, 454 (SD 1980). Until July 1, 1986, Cosgrove did not need to have insurance or prove financial responsibility.

In *Quaring v. Peterson*, 728 F.2d 1121, 1126-27 (8th Cir. 1984), *aff'd* 472 U.S. 478, 105 S.Ct. 3492, 86 L.Ed.2d 383 (1985), the Eighth Circuit held that numerous exemptions to the Nebraska requirement that a driver's license bear the driver's photograph defeated the argument that the state had a compelling interest in requiring Frances Quaring's picture on her driver's license. Quaring objected to having her picture on her driver's license because the Second Commandment forbids the making of "graven images". Exodus 20:4; Deuteronomy 5:8. Nebraska law exempted learner's permits, school permits for farmer's children, farm machinery permits, special restricted permits and temporary permits. *Quaring v. Peterson*, 728 F.2d 1121, 1123 (8th Cir. 1984), *aff'd* 472 U.S. 478, 105 S.Ct. 3492, 86 L.Ed.2d 383 (1985). Specifically, the Eighth Circuit noted that motorists in the few states that do not require photograph licenses (most notably New York) presumably drive in Nebraska without a photographic license without violating the law. *Quaring*, *supra*, 728 F.2d at 1126-27.

South Dakota permits numerous exemptions from the proof of financial responsibility requirement in SDCL 32-35-113. Drivers of vehicles not required to be registered

in South Dakota from the 23 states that do not have compulsory insurance[6] are not required to show evidence of financial responsibility when detained for an offense. SDCL 32-35-114 and 32-35-116. When the driver is not the owner of the vehicle being driven, but has the owner's permission, the driver is exempt from proof of financial responsibility because the burden of financial responsibility falls on the owner, not necessarily the driver. SDCL 32-35-118. A new or used motor vehicle dealer allowing a customer to test drive a new or used vehicle from his inventory is also exempt from proof of financial responsibility. SDCL 32-35-118. Finally, drivers of vehicles owned by public entitles are exempt. SDCL 32-35-124.

During the tourist season, South Dakota is inundated by out-of-state drivers. When stopped, these drivers are not held to the same standard as Cosgrove. SDCL 32-35-114 and 32-35-116. There are certainly more tourists in South Dakota than bona fide conscientious objectors to insurance. South Dakota's interest in public safety is not protected if an uninsured, out-of-state driver causes injury or death.

South Dakota's interest in public safety is not protected if the uninsured driver of a government vehicle causes injury or death. The governmental entity is exempt from financial responsibility, SDCL 32-35-124, and immune from suit, SDCL 3-21-7, 21-32-15 to -18; §27, Art. III, SD Const.; *Rapid City v. Boland*, 271 N.W.2d 60 (SD 1978); *Shaw v. City of Mission*, 88 S.D. 564, 225

---

[6] Only 27 states have compulsory insurance laws. 12A *Couch on Insurance 2d*, §45:681 at 318. Compulsory insurance is distinguished from financial responsibility laws like South Dakota had prior to enactment of SDCL 32-35-113. *12A Couch on Insurance 2d* §45:679 at 315. Therefore, citizens from 23 states can drive in South Dakkota without insurance because their states do not make insurance mandatory.

N.W.2d 593 (1975); *Conway v. Humbert*, 82 S.D. 317, 145 N.W.2d 524 (1966); *Jerauld County v. Indemnity Co.*, 76 S.D. 1, 71 N.W.2d 571 (1955); *Provancial v. U.S.*, 454 F.2d 72 (8th Cir. 1972); 463 F.2d 760 (8th Cir. 1972); *Defender v. City of McLaughlin*, 288 F. Supp. 615 (D.S.D.1964); *Holland v. Yankton School Dist. 63-3*, 375 N.W. 199 (SD 1985); *Zens v. Chicago, M, St.P. & Pac. R.R.*, 386 N.W.2d 199 (SD 1985); *Siefkes v. Watertown Title Co.*, 437 N.W.2d 190 (SD 1989).

In *Quaring v. Peterson*, 728 F.2d 1121, 1126, (8th Cir. 1984) *aff'd* 472 U.S. 478, 105 S.Ct. 3492, 86 L.Ed.2d 383 (1985), the Eighth Circuit said a state may justify a limitation on religious liberty by showing that it is *the least restrictive alternative*, citing *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 718, 101 S.Ct. 1425, 1432, 67 L.Ed2d 624 (1981). The state interest must be of the highest order and *not otherwise served* to outweigh the individual's right to free exercise of religion. *Wisconsin v. Yoder*, 406 U.S. 205, 215, 92 S.Ct. 1526, 1533, 32 L.Ed.2d 15 (1972).

South Dakota already has a less intusive alternative. The legislature has already enacted limited, no-fault uninsured and underinsured motorist statutes that protect most drivers. If Cosgrove is involved in an accident, and if Cosgrove is at fault, and if Cosgrove does not pay a claim for damages, the other motorist's uninsured or underinsured coverage will pay. A problem will not arise unless another uninsured motorist collides with Cosgrove and is indigent and Cosgrove is at fault and Cosgrove does not pay the claim for damages which is very remote. County poor relief is designed for less remote contingencies. South Dakota could also solve the problem by enacting unlimited,

no-fault coverage or by going back to a true financial responsibility law instead of a compulsory insurance law.

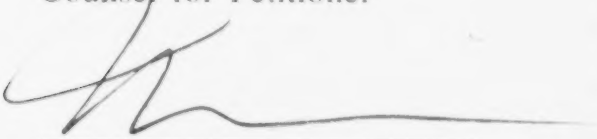
CONCLUSION

Lindy Cosgrove has a genuine religious belief against insurance. South Dakota's (compulsory insurance) financial responsibility law requires Cosgrove to not drive, post $50,000 or violate his religious belief by purchasing insurance. South Dakota's interest in requiring insurance is not compelling because it allows numerous exceptions and is not the least restrictive alternative because the law already protects most persons injured by uninsured or underinsured motorists. Therefore, South Dakota's compulsory insurance financial responsibility law (SDCL 32-35-113) violates Lindy Cosgrove's right to the free exercise of religion guaranteed by the First Amendment to the Constition of the United States and is unconstitutional as applied to him.

WHEREFORE, This Court's supreme review, the final safeguard, is hereby requested.

Respectfully submitted,

MAX A. GORS
GORS AND BRAUN, P.C.
115 E. Sioux
P.O. Box 1115
Pierre, SD 57501-1115
Telephone: (605) 224-6281
Counsel for Petitioner



by: MAX A. GORS

—NO.

IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1989

LINDY D. COSGROVE,

Petitioner,

vs.

STATE OF SOUTH DAKOTA,

Respondent.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three true and correct copies of the foregoing Petition for Writ of Certiorari were mailed to the Office of the Attorney General, State Capitol, 500 E. Capitol, Pierre, South Dakota 57501, this 30th day of June, 1989.

MAX A. GORS
GORS AND BRAUN, P.C.
115 E. Sioux
P.O. Box 1115
Pierre, SD 57501-1115
Telephone: (605) 224-6281
Counsel for Petitioner

by: MAX A. GORS

Appendix

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,
Plaintiff and Appellee,

v.

LINDY D. COSGROVE,
Defendant and Appellant

HONORABLE RONALD K. MILLER
Judge

DIANE M. PATRICK
Assistant Attorney General
Pierre, South Dakota

On the brief:
ROGER A TELLINGHUISEN
Attorney General
Pierre, South Dakota
Attorney for plaintiff
and appelee.

MAX A. GORS of
GORS, BRAUN AND ZASTROW
Pierre, South Dakota
Attorneys for defendant
and appellant.

CONSIDERED ON BRIEFS
March 22, 1989

OPINION FILED
May 3, 1989

CASE NO. 16294

MILLER, Justice

In this opinion, we hold that the statute requiring a driver or owner of a motor vehicle to maintain financial responsibility does not place an unconstitutional burden on his free exercise of religion.

FACTS

In January 1988, LINDY D. COSGROVE (Cosgrove) was stopped by a state trooper after his car was spotted on Interstate 90 at a time when the road had been closed by the Governor due to blizzard conditions. The trooper asked Cosgrove to show evidence of financial responsibility pursuant to SDCL 32-35-113 and -114*. Cosgrove stated that he did not have such proof.

---

*SDCL 32-35-113 provides:

Every driver or owner of a motor vehicle shall at all times maintain in force one of the forms of financial responsibility on the motor vehicle by one of the following methods:

> (1) Having in force on the motor vehicle an owner's policy of liability insurance as provided in §32-35-70;
>
> (2) Having in force a bond as provided in §32-35-83;
>
> (3) Having a certificate of deposit of money or securities as provided in §32-35-87, but in the amount of fifty thousand dollars; or
>
> (4) Having a certificate of self-insurance, as provided in §§32-35-90 and 32-35-91, supplemented by an agreement by the self-insurer that, with respect to accidents occurring while the certificate is in force, he will pay the same amounts that an insurer would have been obligated to pay under an owner's motor vehicle laibility policy if it had issued such a policy to said self-insurer.

Failure to maintain financial responsibility is a Class 2 misdemeanor. [A Class 2 misdemanor carries a maximum penalty of a $100 fine and/or 30 days in jail.]

(Footnote Continued)

The officer then cited Cosgrove for failure to maintain financial responsibility. (However, he did not cite Cosgrove for driving on the interstate while it was closed. SDCL 31-4-14.3.).

Cosgrove pled not guilty and appeared pro se at a court trial. At trial, he informed the court that he had a sincerely held religious belief against having insurance. The court found him guilty of the cited offense and fined him $75.00. Cosgrove appeals, arguing that the requirement of the statute amounts to an unconstitutional burden on his free exercise of religion, violating the First Amendment of the United States Constitution and Article VI, § 3 of South Dakota Constitution. We affirm.

DECISION

WHETHER SDCL 32-35-113 VIOLATES COSGROVE'S CONSTITUTIONAL RIGHT TO FREE EXERCISE OF RELIGION.

We first observe that Cosgrove's religious belief appears sincerely held. *Thomas v. Review Board*, 450 U.S. 707, 101 S.Ct. 1425, 67 L.Ed.2d 624 (1981). His belief stems from the premise that he has insurance with God because God is his Maker and has promised to provide in any situation. As part of his previous employment, Cosgrove was entitled to various unspecified insurance benefits at no cost to him. Rather than accept the free insurance, Cosgrove

---

(Footnote Continued)

SDCL 32-35-114 provides:

> Every person who drives a motor vehicle, required to be registered in this state, if requested by a law enforcement officer as a secondary action when the driver of the vehicle is detained for a suspected violation of Title 32 or some other offense, shall provide evidence of financial responsibility.

asked his employer to drop the coverage. His wife likewise had similar unspecified insurance benefits with her employer which she had her employer terminate because of Cosgrove's religious belief.

While we agree that Cosgrove's belief may be sincere, we also note that SDCL 32-35-113 does not force him to purchase insurance *for his own benefit.* Rather, it requires that the owner or operator of a motor vehicle provide proof of *liability* insurance. It is beyond question that this type of insurance is not inteneded to protect the insured against injury, but rather is intended to protect *others* from the acts of the insured.

The important constitutional underpinnnings of this issue require that we apply the strict scrutiny standard to our review. As such, we must determine whether there is a compelling state interest behind the statute and, if so, whether it provides the least restrictive means of achieving that interest. *Thomas, supra; Sherbert v. Verner*, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963).

As we noted in *State v. Arnold*, 379 N.W.2d 322 (S.D. 1986), South Dakota has a highly legitimate governmental interest in maintaining, protecting, and regulating the public safety. In that case, we found that State's compelling interest extended to the requirement that drivers on South Dakota highways possess a valid driver's license. We also found that this legitimate interest had a secular purpose and was not directed against any religious sect or faith. We held in *Arnold* that the statute requiring licensure was not invalid because of its interference with free exercise simply because of the incidental detrimental effect that it may have had on the adherents of one or more religious views. *Arnold* (citing *Braunfeld v. Brown*, 366 U.S. 599, 81 S.Ct. 1144, 6 L.Ed.2d 563 (1961), *reh'g*

denied 368 U.S. 869, 82 S.Ct. 22, 7 L.Ed.2d 70 (1961).

As required by *Thomas, Sherbert, and Arnold, supra*, we must examine SDCL 32-35-113 to ascertain whether it fulfills State's legitimate interest in maintaining, protecting and regulating public safety. The instant statute is clearly designed to protect the public. It requires those with motor vehicles registered in this state and who use such vehicles on public highways to maintain some form of financial responsibility to cover the costs attendant to their causing an accident. Without such a provision, these costs could be borne by the public at large rather than those who are responsible for the damages.

We must next consider whether the statute is the least restrictive means of achieving the state's interest. *Thomas, Sherbert, and Arnold, supra.* We note that the statute provides Cosgrove with four options for maintaining financial responsibility. He may either maintain a policy of automobile liability insurance, purchase a surety bond, tender a certificate of deposit for $50,000 to the state treasurer, or obtain a certificate of self-insurance. Only one of those options requires that he carry liability insurance and thus violates his religious precepts. None of the other options impacts his religious belief in any way. Cosgrove correctly notes that the alternative of becoming self-insured is not open to him because it requires that he have a fleet of at least twenty-five vehicles. Regardless, he still has the option of purchasing a surety bond or tendering a certificate of deposit to the state treasurer. These two alternatives for financial responsibility provide Cosgrove an opportunity to stay within the bounds of the statute while maintaining the integrity of his religious belief. We realize that these alternatives are not easy to meet; however, they

are viable options which pass constitutional muster. We thus hold that SDCL 32-35-113 does not place an unconstitutional burden on Cosgrove's free exercise of religion. *Thomas*, *supra*.

Affirmed
All Justices concur.

TO	FROM
Mr. Lindy Cosgrove Route #4; Box 5 Reliance, South Dakota 57569	**SIMPSON INSURANCE AGENCY** 425 S. Sanborn **MITCHELL, SD 57301** **(605) 996-6595**

SUBJECT	DATE
Bond vs. auto liability insurance	Feb. 9, 1988

MESSAGE:

I talked to our bonding companies to see if they have a way of writing the Financial Responsibility bond you were inquiring about which would take the place of your purchasing auto liability insurance. None of the companies will write this type of bond. The reason given is because of the very nature of a bond. The bond is nothing more than a financial guaranty that, in the event of a claim, the bonding company will pay the amount of the claim, but then, in turn, will collect that amount of money from the individual. It isn't "insurance" where you pay a premium and the company pays your claims. All the bond does is guarantee that *you* have the liquid assets to pay this type of loss yourself. You would be looking at a $75,000 guarantee. For any other types of bonds, they require liquid assets of 3 times the amount of the bond, so they feel that if it is an "either-or" type of situation, for example either you put up a bond or buy insurance, they want you to buy the insurance.

ORIGINATOR-DO NOT WRITE BELOW THIS LINE REPLY TO -----SIGNED

App. 7

STATE OF SOUTH DAKOTA
COUNTY OF BRULE

SS.

IN CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,

Plaintiff,

v.

LINDY D. COSGROVE,

Defendant.

CRIM. NO. 88-19

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

The above-named Defendant, LINDY D. COSGROVE, was charged in Brule County, South Dakota, by a Uniform Traffic Ticket Summons and Complaint with the offense of No Proof of Financial Responsibility in violation of SDCL 32-35-113 (1987 Supp.).

As reflected by the records of the Court, the Defendant, Lindy D. Cosgrove, appeared without counsel on the 16th day of February, 1988, for arraignment of the above charge and entered a plea of "Not Guilty". By Order of the Court, the matter was scheduled for a Court Trial to commence on the 22nd day of March, 1988.

The Court Trial commenced as scheduled. The Defendant, Lindy D. Cosgrove, appeared pro se, and the State of South Dakota appeared by and through Ann M. Arnoldy, Brule County Deputy State's Attorney, before the Honorable Ronald K. Miller. At the Court Trial, the Court considered all the testimony, records, and evidence. Thereupon, the Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On January 24, 1988, the Defendant, LINDY D. COSGROVE, did drive a motor vehicle, required to be registered in the State of South Dakota, upon Interstate-90 in Brule County, South Dakota.

2. Sgt. Greg Ingemunson of the South Dakota Highway Patrol stopped and detained the Defendant, Lindy D. Cosgrove, for operating a motor vehicle on Interstate-90 when said Interstate Highway had been lawfully closed.

3. Pursuant to the stop of the Defendant, Lindy D. Cosgrove, Sgt. Ingemunson requested the Defendant, the owner and operator of the motor vehicle, to provide evidence of financial responsibility.

4. At the time of the stop, the Defendant, Lindy D. Cosgrove, did not provide Sgt. Ingemunson with written evidence of financial responsibility neither in the form of the name of an insurance company or surety company, which issued him a motor vehicle liability policy, and the number of such insurance policy or surety bond; or in the form of the number of a certificate of deposit issued pursuant to SDCL 32-35-87; or in the form the number of a

certificate of self-insurance issued pursuant to SDCL 32-35-91.

5. Lindy D. Cosgrove's refusal to purchase an owner's policy of motor vehicle insurance is grounded on a genuinely held religious belief.

6. Posting a $50,000.00 certificate of deposit as an alternative form of financial responsibility would place substantial pressure on Lindy D. Cosgrove to violate his religious beliefs by purchasing insurance.

7. Posting a $50,000.00 bond as an alternative form of financial responsibility would place substantial pressure on Lindy D. Cosgrove to violate his religious beliefs by purchasing insurance.

8. Lindy D. Cosgrove is not eligible for a certificate of self-insurance under SDCL 32-35-90 because he does not have 25 or more vehicles registered in his name.

9. Lindy D. Cosgrove needs his drivers license to work.

10. South Dakota's requirement that Lindy D. Cosgrove prove financial responsibility is a burden on Lindy D. Cosgrove's free exercise of religion.

11. Driving without insurance is not a threat to public safety, peace or order.

12. Exemption of Lindy D. Cosgrove from the requirement of posting financial responsibility will not seriously impair South Dakota's ability to achieve its objective of insuring persons injured in motor vehicles are compensated because government, new and used motor vehicle

dealer and persons from out of state are exempted.

13. There are less intrusive methods of achieving South Dakota's objectives.

CONCLUSIONS OF LAW

A. The First Ammendment to the U.S. Constitution and the Section 3 of Article VI of the South Dakota Constitution provide for the free exercise of religion.

B. The First Ammendment to the U.S. Constitution is applicable to the states through the Fourteenth Amendment to the U.S. Constitution. *Cantwell v. Conn.*, 310 U.S. 296, 303, 60 S.Ct. 900, 903, 84 L.Ed.2d 1213 (1940).

C. South Dakota may not regulate religious beliefs by penalizing conduct grounded upon a sincerely held religious belief or by requiring conduct which violates a sincerely held religious belief, *Sherbert v. Verner*, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963); *Quaring v. Peterson*, 728 F.2d. 1121, 1123 (8th Cir. 1984).

D. A person who drives a vehicle in South Dakota must prove financial responsibility by buying insurance, posting a bond for $50,000.00, posting a certificate of deposit for $50,000.00 or having a certificate of self insurance. SDCL 32-35-114, 32-35-116, 32-35-113, 32-35-70, 32-35-83, 32-35-87, 32-35-90 and 32-35-91.

E. Failure to prove financial responsibility results in criminal sanctions, SDCL 32-35-114 and 32-35-116, loss of drivers license, SDCL 32-35-121, and possible loss of license plates and registration, SDCL 32-35-44.

F. Exemption of persons who have a sincerely held religious belief from SDCL 32-35-113, 32-35-114 and 32-35-116 will not seriously impair South Dakota's ability to achieve its objective, *Wisconsin v. Yoder*, 406 U.S. 205, 221, 92 S.Ct. 1526, 1536, 32 L.Ed.2d 15 (1972), or make the statutory scheme unworkable, *Braunfield v. Brown*, 366 U.S. 509, 81 S.Ct. 1144, 6 L.Ed.2d 563 (1961). *Quaring v. Peterson*, 728 F.2d 1121 (8th Cir. 1984) *aff'd* 105 S.Ct. 3492 (1985).

G. South Dakota permits numerous exemptions to the proof of financial responsibility requirement in SDCL 32-35-114 and 32-35-116, including drivers of automobiles not required to be registered in South Dakota, SDCL 32-35-114 and 32-35-116, new and used motor vehicle dealers allowing test drives of inventory, SDCL 32-35-118, and government vehicles, SDCL 32-35-124. *Quaring v. Peterson*, 728 F.2d 1121, 1126 (8th Cir. 1984), *aff'd* 105 S.Ct. 3492 (1985).

H. Requiring proof of financial responsibility is not the least intrusive means of accomplishing South Dakota's objective of providing that persons injured in automobiles are compensated. South Dakota could enact no fault insurance, provide uninsured motorist coverage (which already must be offered by insurance companies doing business in South Dakota), provide special risk pools such as those for high risk drivers or persons who cannot buy health insurance or go back to the system in effect before July 1, 1986, when the law under which Lindy D. Cosgrove was changed was enacted (i.e., the "one-bite" rule).

I. SDCL 32-35-113, 32-35-114 and 32-35-116 are unconstitional infringements on the free exercise of religion as applied to Lindy D. Cosgrove.

DATED:

BY THE COURT:

RONALD K. MILLER
CIRCUIT COURT JUDGE

ATTEST:

Clerk of Courts

(SEAL)

C7:10

STATE OF SOUTH DAKOTA
COUNTY OF BRULE

SS.

IN CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,

Plaintiff,

v.

LINDY D. COSGROVE,

Defendant.

CRIM. NO. 88-19

JUDGMENT OF ACQUITTAL

A complaint was filed with this Court on the 24th day of January, 1988, charging the Defendant with the crime of NO INSURANCE ON VEHICLE (SDCL 32-35-113). The Defendant was arraigned on said Complaint on the 16th day of February, 1988. The Defendant, who was not represented by an attorney, having waived his right to counsel, and Ann M. Arnoldy, as Prosecuting Attorney, appeared at the Defendant's arraignment. The Court advised the Defendant of all constitutional and statutory rights pertaining to the charge that had been filed against the Defendant. The Defendant plead Not Guilty to the charge contained in the Complaint.

A trial commenced on the 22nd day of March, 1988, in Chamberlain, South Dakota, on the charges.

It is, therefore, ORDERED that Lindy D. Cosgrove is not guilty.

DATED:

BY THE COURT:

_____

RONALD K. MILLER
CIRCUIT COURT JUDGE

ATTEST:

_____

Clerk of Courts

(SEAL)

C7:10

STATE OF SOUTH DAKOTA
COUNTY OF BRULE
SS.
IN CIRCUIT COURT
FOURTH JUDICIAL COURT

STATE OF SOUTH DAKOTA,

Plaintiff,

vs.

LINDY D. COSGROVE,

Defendant.

CRIM. NO. 88-19

LINDY D. COSGROVE'S AMENDED OBJECTIONS TO THE STATES PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND PROPOSED JUDGMENT OF CONVICTION.

1. Lindy D. Cosgrove objects to the State's proposed Finding of Fact #6 because it does not recognize that Lindy D. Cosgrove's refusal to purchase an owner's policy of motor vehicle insurance is grounded on a genuinely held religious belief.

2. Lindy D. Cosgrove objects to the State's proposed Finding of Fact #7 because it does not recognize that the forms of financial responsibility other than insurance are so much more burdensome that they place substatial

pressure on Lindy D. Cosgrove to violate his genuinely held religious beliefs by purchasing insurance.

3. Lindy D. Cosgrove objects to the State's proposed Conclusion of Law #3 because it is not a correct statement of the law. The requirement of financial responsibility is to insure what persons injured in motor vehicles are compensated which is already done by other laws.

4. Lindy D. Cosgrove objects to the state's proposed Conclusion of Law #5 because it does not recognize that posting a $50,000.00 certificate of deposit as an alternative form of financial responsibility is so much more burdensome that it places substantial pressure on Lindy D. Cosgrove to violate his genuinely held religious beliefs by purchasing insurance.

5. Lindy D. Cosgrove objects to the State's proposed Conclusion of Law #6 because it proposes to find him guilty of violating a law which is unconstitutional as it applies to him because it is an unconstitutional infringement of the free exercise of religion guaranteed by the First and Fourteenth Amendments to the U.S. Constitution and Section 3 of Article VI of the South Dakota Constitution.

6. Lindy D. Cosgrove objects to the State's proposed Judgment of Conviction because it adjudges him guilty of violating a statute which is an unconstitutional infringement of the free exercise of religion guaranteed by the First and Fourteenth Amendments to the U.S. Constitution and Section 3 of Article VI of the South Dakota Constitution.

DATED: Apr. 25, 1988

GORS, BRAUN AND ZASTROW, P.C.

MAX A. GORS
Attorney for Defendant
115 E. Sioux, P.O. Box 1115
Pierre, SD 57501-1115
(605) 224-6281

SUPREME COURT OF SOUTH DAKOTA

CASE NO. 16294

STATE OF SOUTH DAKOTA,

Appellee,

vs.

LINDY D. COSGROVE

Appellant.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that LINDY D. COSGROVE, the Appellant above-named, hereby appeals to the Supreme Court of the United States from the final order of the Supreme Court of South Dakota, affirming the judgment of conviction, entered herein on May 3, 1989.

This appeal is taken pursuant to 28 U.S.C. Sec. 1257(a).

MAX A. GORS
GORS AND BRAUN, P.C.
115 E. Sioux
P.O. Box 1115
Pierre, SD 57501-1115
Telephone: (605) 224-6281
Counsel for Petitioner

by: MAX A. GORS

Supreme Court, U.S.
FILED
AUG 2 1989
JOSEPH F. SPANIOL, JR.
CLERK

NO. 89-10

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

LINDY D. COSGROVE,

Petitioner,

v.

STATE OF SOUTH DAKOTA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF SOUTH DAKOTA

RESPONDENT'S BRIEF IN OPPOSITION

ROGER A. TELLINGHUISEN
ATTORNEY GENERAL
State of South Dakota

Craig M. Eichstadt*
Diane Best
Assistant Attorneys General
State Capitol
Pierre, South Dakota 57501-5090
Telephone: (605) 773-3215
Counsel for Respondent
*Counsel of Record

QUESTION PRESENTED

WHETHER A STATE STATUTE REQUIRING MOTORISTS TO MAINTAIN ONE OF FOUR FORMS OF FINANCIAL RESPONSBIILITY VIOLATES AN INDIVIDUAL'S FIRST AMENDMENT RIGHT TO FREE EXERCISE OF RELIGION WHEN ONE OF THE FOUR OPTIONS IS INCONSISTENT WITH HIS RELIGIOUS BELIEFS?

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iii
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL PROVISIONS INVOLVED	2
STATE STATUTE INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR DENYING THE WRIT	6
I. THE STATE COURT BELOW, IN DECIDING THE ISSUE PRESENTED BY THE PETITIONER, RELIED UPON APPLICABLE DECISIONS OF THIS COURT AND RULED CORRECTLY.	6
II. THE ISSUE IS NOT SUFFICIENTLY IMPORTANT TO WARRANT REVIEW BY THIS COURT.	13
III. A DIFFERENT RESULT FROM THAT REACHED BELOW WOULD CAUSE A SEVERE BURDEN IN ENFORCING FINANCIAL RESPONSIBILITY LAWS.	15
CONCLUSION	18
APPENDIX	

TABLE OF AUTHORITIES

CASES: PAGE

Braunfeld v. Brown, 366 U.S. 599 (1961), reh'g denied, 368 U.S. 869 (1961) 6, 16, 17

Cox v. New Hampshire, 312 U.S. 569 (1941) 6

Employment Division v. Smith, ___ U.S. ___, 108 S.Ct. ___, 99 L.Ed.2d 753 (1988) 6, 7, 9, 15

Kesler v. Department of Public Safety, 369 U.S. 153 (1962) 8

Reynolds v. United States, 98 U.S. 145 (1878) 7, 9

Sherbert v. Verner, 374 U.S. 398 (1963) 7

State v. Cosgrove, 439 N.W.2d 119 (1989) 9

Thomas v. Review Board of Indiana Employment Security Division, 450 U.S. 707 (1981) 7

United States v. Lee, 455 U.S. 252 (1982) 11

STATUTORY REFERENCES:

28 U.S.C. § 1257(a) 2

SDCL 32-35-113 3, 5, 10

OTHER REFERENCES:

U.S. Const. amend. I 2

NO. 89-10

IN THE

SUPREME COURT OF THE

UNITED STATES

OCTOBER TERM, 1989

LINDY D. COSGROVE,

Petitioner,

v.

STATE OF SOUTH DAKOTA,

Respondent.

The Respondent, State of South Dakota, respectfully prays that Petitioner's Application for a Writ of Certiorari to review the judgment of the Supreme Court of the State of South Dakota in the above-entitled proceeding be denied.

OPINIONS BELOW

The opinion of the Supreme Court of South Dakota dated May 3, 1989, is reported

at 439 N.W.2d 119 (S.D. 1989), and is reprinted in the appendix to the Petition. The Judgment of the South Dakota Supreme Court was entered May 3, 1989, and is reprinted in the appendix hereto at A-1. The Judgment of Conviction in the above-entitled matter was issued on May 23, 1988, by the Circuit Court for the Third Judicial Circuit, Brule County, South Dakota. This unreported judgment is reprinted in the appendix hereto at A-3.

JURISDICTION

The Respondent accepts the Petitioner's assertion that jurisdiction in the above-entitled matter may be invoked, if this Court grants the writ, pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the

free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

STATE STATUTE INVOLVED

SDCL 32-35-113. Every driver or owner of a motor vehicle shall at all times maintain in force one of the forms of financial responsibility on the motor vehicle by one of the following methods:

1. Having in force on the motor vehicle an owner's policy of liability insurance as provided in § 32-35-70;
2. Having in force a bond as provided in § 32-35-83;
3. Having a certificate of deposit of money or securities as provided in § 32-35-87, but in the amount of fifty thousand dollars; or

4. Having a certificate of self-insurance, as provided in §§ 32-35-90 and 32-35-91, supplemented by an agreement by the self-insurer that, with respect to accidents occurring while the certificate is in force, he will pay the same amounts that an insurer would have been obligated to pay under an owner's motor vehicle liability policy if it had issued such a policy to said self-insurer.

Failure to maintain financial responsibility is a Class 2 misdemeanor.

STATEMENT OF THE CASE

References to the Petitioner's trial transcript will be made by the letters "TR," followed by the applicable page number. Reference will also be made to the appendix attached hereto.

On January 24, 1988, Petitioner was issued a citation for failure to maintain proof of financial responsibility in violation of SDCL 32-35-113. TR 12. At his court trial on March 22, 1988, Petitioner did not dispute the fact that he had failed to maintain proof of financial responsibility as required by South Dakota law. TR 14. He contended that he has a religious conviction precluding him from purchasing insurance, only one of the options under South Dakota's financial responsibility law. TR 14. He also testified that he did not have any religious conviction against the other three alternatives available under SDCL 32-35-113. TR 14, 15, 16.

The trial court found Petitioner guilty and fined him $75. TR 30. The Petitioner's conviction was affirmed upon appeal to the Supreme Court of South Dakota. A-1.

REASONS FOR DENYING THE WRIT

I

THE STATE COURT BELOW, IN DECIDING THE ISSUE PRESENTED BY THE PETITIONER, RELIED UPON APPLICABLE DECISIONS OF THIS COURT AND RULED CORRECTLY.

Petitioner asserts that one option under South Dakota's financial responsibility law, insurance, contravenes his religious convictions. The State does not contest this assertion. According to Petitioner, because of the mere existence of this option, he should be exempt from criminal prosecution for failure to comply with the state law.

This Court has consistently ruled that the First Amendment does not confer the right to commit crimes upon adherents of particular religious beliefs. Employment Division v. Smith, ___ U.S. ___, 108 S.Ct. ___, 99 L.Ed.2d 753 (1988); Braunfeld v. Brown, 366 U.S. 599, 603 (1961), reh'g denied, 368 U.S. 869 (1961); Cox v. New Hampshire, 312 U.S.

569 (1941); Reynolds v. United States, 98 U.S. 145 (1878). While the First Amendment does provide protection for legitimate claims to the free exercise of religion, it does not protect conduct that a state has "validly proscribed." Employment Division v. Smith, 99 L.Ed.2d at 764.

In considering whether state criminal laws legitimately proscribe specific conduct, this Court considers whether the state has a compelling interest in enforcing the statute involved. Sherbert v. Verner, 374 U.S. 398 (1963); Thomas v. Review Board of Indiana Employment Security Division, 450 U.S. 707 (1981). If a compelling interest is found, the Court then determines whether the state statute is the least restrictive means of achieving the state's legitimate objective. Sherbert v. Verner, supra, and Thomas v. Review Board, supra.

The South Dakota Supreme Court, following this analysis, determined that the State does have a compelling interest in enforcing its motor vehicle financial responsibility law. This compelling interest arises from the State's need to protect citizens from drivers who are unable or unwilling to be responsible for damage they may inflict and thus place that burden upon the public treasury or the individual victim.

The South Dakota court's opinion that financial responsibility laws are designed to protect the public both individually and collectively is consistent with this Court's decision in Kesler v. Department of Public Safety, 369 U.S. 153 (1962). Therein, the Court stated that financial responsibility laws protect the public safety by discouraging careless driving or at least mitigating its consequences. 369 U.S. at 158.

The State court's determination also comports with this Court's previous opinions holding that when conduct poses a substantial threat to public safety, peace, or order, a Free Exercise of Religion challenge may be rejected. Employment Division v. Smith, 99 L.Ed. at 764 n.13; Reynolds v. United States, 98 U.S. at 166.

The South Dakota court properly found that the State has a compelling interest in enforcing this public safety statute.

The South Dakota Supreme Court next considered whether the State's interests could be met by less restrictive means. The South Dakota court determined that options already exist within the State financial responsibility law that would allow the Petitioner to "stay within the bounds of the statute while maintaining the integrity of his religious belief." State v. Cosgrove, 439 N.W.2d 119, 121 (1989).

In order to comply with the State's financial responsibility law, Petitioner has the option of purchasing a surety bond or tendering a certificate of deposit to the state treasurer.[1] SDCL 32-35-113(2) and 32-35-113(3).

While Petitioner contends that these other options are not "viable options," he has no religious conviction that would prohibit him from complying with those other requirements. TR 14, 15, 16. He considers the other options to be a financial burden. The State acknowledges that these alternatives are burdensome to Petitioner. It must, however, be recognized that "every person cannot be shielded from all the

---

[1]One other option, self-insurance, is not available to Petitioner because it applies only to motorists with a fleet of over twenty-five vehicles. Petitioner does not have twenty-five vehicles.

burdens incident to exercising every aspect of the right to practice religious beliefs." United States v. Lee, 455 U.S. 252, 261 (1982).

Petitioner asserts that a less restrictive alternative would be to create a religious exemption from South Dakota's motor vehicle responsibility law. As justification, Petitioner asserts that other exemptions already exist. This assertion is analogous to arguing that religious exemptions should be granted from South Dakota's child passenger restraint law because other exemptions exist.[2] The fact

---

[2]SDCL 32-27-1. Every parent or legal guardian of a child under five years of age, when transporting the child on the streets and highways of this state in a passenger vehicle, shall provide for the protection of the child by properly securing the child in a child passenger restraint system according to manufacturer's instructions. The child

(Footnote Continued)

that the state legislature has determined that other kinds of exemptions suit its legislative purpose does not provide a reason for the court to grant a religious exemption. A religious exemption, if granted, could be harmful to other motorists, or in the case of

---

(Footnote Continued)
passenger restraint system must meet department of transportation motor vehicle safety standard 213 as in effect January 1, 1984. The requirements of this section may be met when the child is at least two and under five years of age by securing the child in a seat belt. A parent or guardian who violates this section is guilty of a petty offense.

SDCL 32-37-2. The provisions of § 32-37-1 do not apply:

> (1) To drivers licensed in another state or jurisdiction;
> (2) If the child's personal needs are being attended to by someone other than the driver;
> (3) If all seating positions equipped with child passenger restraint systems or seat belts are occupied;
> (4) In passenger cars manufactured before 1966 that have not been equipped with seat beats.

the child passenger restraint law, to the motorist's own child.

Unlike religious exemptions, the alternatives of purchasing a surety bond or tendering a certificate of deposit to the State Treasurer allow the State to achieve its goal of protecting the public safety. While these alternatives may cause a financial burden to Petitioner they are the least restrictive alternative.

Following this Court's analysis of Free Exercise of Religion questions, the South Dakota Court determined that Petitioner is required to comply with South Dakota's financial responsibility law notwithstanding his religious conviction.

II

THE ISSUE IS NOT SUFFICIENTLY IMPORTANT TO WARRANT REVIEW BY THIS COURT.

The Petitioner's Application for a Writ of Certiorari addresses the issue of whether

Petitioner should be exempt from a state financial responsibility law because he has a religious conviction against one of four options under that law, liability insurance. That issue does not merit the attention of this Court.

This Court has indicated that it will exercise its discretion to review a decision only when there are special and important reasons to do so. Rules of the Supreme Court, 17.1. There are no special or important reasons to review the South Dakota decision. Instead, there valid reasons to decline review.

First, the South Dakota court's decision is, as addressed above, consistent with applicable decisions of this Court. Second, there is no disparity in opinion among state or federal courts regarding this issue. In fact, neither Petitioner's Application nor the State court decision recite any lower

court opinion that has discussed the issue involved in this case. Likewise, Petitioner has not shown that this issue is likely to arise in either state or federal courts at any time in the future. As Justice Brennan has stated, a slot on the court's calendar is both "precious and costly." Employment Division v. Smith, 99 L.Ed.2d at 769. This matter is undeserving of one of the few precious and costly positions on the court's calendar.

III

A DIFFERENT RESULT FROM THAT REACHED BELOW WOULD CAUSE A SEVERE BURDEN IN ENFORCING FINANCIAL RESPONSIBILITY LAWS.

The Petitioner maintains that his conviction should be reexamined and reversed. If the Court did examine this issue and determine that the Supreme Court of South Dakota's decision should be reversed, South Dakota and other states that have financial

responsibility laws or other compulsory insurance laws, would be faced with a severe burden in enforcing them.

Due to the cost of liability insurance,[3] many motorists would file insincere "religious objection" claims to compulsory insurance or financial responsibility laws in order to avoid enforcement.

This Court has recognized that it would be tempting for individuals to claim a religious exemption from state regulation when an economic benefit would result. Braunfeld v. Brown, 366 U.S. at 609, 455 U.S. at 263 n.3.

Licensing authorities could be overwhelmed by requests for religious

---

[3]Although the record is silent on this issue, the Petitioner alleges that the average cost of insurance is $500 per year in South Dakota.

exemptions from individuals who do not have genuinely held religious beliefs against purchasing insurance. These insincere petitions could make financial responsibility and other compulsory insurance laws unworkable.

Such religious exemption claims could necessitate a multitude of inquiries into the sincerity of individuals' religious beliefs. States would then be faced with determining whether such investigations would contravene constitutionally protected religious guarantees. Braunfeld v. Brown, 366 U.S. at 609.

Reversal of the South Dakota Court's decision would only create further difficulties in enforcing financial responsibility laws.

CONCLUSION

The State respectfully requests that the Petition for Certiorari be denied.

Dated this 2nd day of August, 1989.

Roger A. Tellinghuisen

ROGER A. TELLINGHUISEN
ATTORNEY GENERAL
STATE OF SOUTH DAKOTA

Craig M. Eichstadt

Craig M. Eichstadt*
Diane Best
Assistant Attorneys General
Office of the Attorney General
State Capitol
Pierre, South Dakota 57501-5090
(605) 773-3215

*Counsel of Record

Appeal No. 16294
IN THE SUPREME COURT)
State of South Dakota)SS.

May 3, 1989

Present: Chief Justice George W. Wuest and Justices Robert E. Morgan, Frank E. Henderson, Richard W. Sabers and Robert A. Miller.

STATE OF SOUTH DAKOTA)
)
Plaintiff and Appellee,)
)
v.)
)
LINDY D. COSGROVE,)
)
Defendant and Appellant.)

This cause coming on to be heard upon the merits of the cause, oral argument having been dispensed with by the Court, and the Court having advised thereon and filed its decision in writing, now, therefore,

IT IS CONSIDERED, ORDERED AND ADJUDGED that the Judgment of the Circuit Court, within and for Brule County, appealed from herein, be and the same is hereby affirmed,

AND IT IS FURTHER ORDERED that this cause be and it is hereby remanded to said circuit court for further proceedings

according to law and the decision of this Court.

AND IT IS FURTHER ORDERED AND ADJUDGED that no costs be taxed.

BY THE COURT:

/s/ George W. Wuest
Chief Justice

Attest:

/s/ Gloria J. Engel
Clerk of the Supreme Courts

(SEAL)

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
: SS
COUNTY OF BRULE) FOURTH JUDICIAL CIRCUIT
CRIM. NO. 88-19

STATE OF SOUTH DAKOTA,
Plaintiff,

v.

LINDY D. COSGROVE,
Defendant.

JUDGMENT OF CONVICTION

A complaint was filed with this Court on the 24th day of January, 1988, charging the Defendant with the crime of NO INSURANCE ON VEHICLE (SDCL 32-35-113). The Defendant was arraigned on said Complaint on the 16th day of February, 1988, the Defendant, who was not represented by an attorney, having waived his right to counsel, and Ann M. Arnoldy, as Prosecuting Attorney, appeared at the Defendant's arraignment. The Court advised the Defendant of all constitutional and statutory rights pertaining to the charge that had been filed against the Defendant. The Defendant plead Not Guilty to the charge contained in the Complaint.

A trial commenced on the 22nd day of March, 1988, in Chamberlain, South Dakota on the charges. On said date, the Court made and entered Findings of Fact and Conclusions of Law, and returned a verdict of: GUILTY.

It is, therefore, ORDERED that a judgment of Guilty is entered as to the following: NO INSURANCE ON VEHICLE in violation of SDCL 32-35-113.

SENTENCE

On the 22nd day of March, 1988, the Court asked the defendant if any legal cause existed to show why Judgment should not be pronounced. There being no cause offered, the Court thereupon pronounced the following sentence:

ORDERED that the Defendant:

Be fined in the amount of Seventy-Five Dollars ($75.00), which can be served at Twenty Dollars ($20.00) per day in the Brule County Jail; and the Defendant shall be given

a stay of execution of said sentence, pending appeal of the matter and notice thereof within thirty (30) days of this date.

Dated this 23rd day of May, 1989, at Chamberlain, South Dakota.

ATTEST:

/s/ Bernadine Rindels
Clerk--Brule County
(SEAL)

BY THE COURT:

/s/ Ronald K. Miller
Circuit Court Judge